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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,731	08/22/2002	Karl Heinz Schmid	C 2079 PCT/US	4546
23657 7590 01/03/2007 COGNIS CORPORATION PATENT DEPARTMENT 300 BROOKSIDE AVENUE AMBLER, PA 19002			EXAMINER CHANNAVAJJALA, LAKSHMI SARADA	
			ART UNIT	PAPER NUMBER
			1615	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/03/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/088,731

Applicant(s)

SCHMID ET AL.

Examiner

Lakshmi S. Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15, 17-21 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 17, 19-21 and 23-31 is/are rejected.
- 7) ☒ Claim(s) 15 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of Receipt of amendment and remarks dated 10-11-2006 is acknowledged.

Claims 12-15, 17-21 and 23-31 are pending in the instant application.

Response to Arguments

Applicant's arguments filed 10-11-06 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 103

1. Claims 12-14, 17-21 and 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,235,702 (US '702) in view of WO 96/15138 (WO) or vice-versa or US '702 by itself.

Instant claims are directed to a composition comprising an alkyl and/or alkenyl oligoglycoside and a foam stabilizer selected from the group of dicarboxylic acid monoester, or dicarboxylic acid monoester salts or mixtures thereof. Claims 18-23 are directed to a process of enhancing the dermatological and ophthalmic mucus membrane combability of a cosmetic composition with the above composition.

US '702 teaches aqueous nacreous luster concentrate comprising an ester formed by reacting a hydroxy-functionalized carboxylic acid with a fatty alcohol containing 6 to 22 carbon atoms and an emulsifier selected from the nonionic, cationic and anionic, esterquat etc and a polyol (col. 2, lines 8-17). US '702 teaches that the carboxylic acid esters are prepared by esterification of carboxylic acids and containing 4 to 12 carbon atoms, having 2 to 4 carboxyl groups, with fatty alcohols. US '702 teaches suitable acids and fatty alcohols which are the same as that claimed, for preparing the esters

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(col. 2). US '702 further teach that the suitable nonionic surfactants including alkyl mono- and oligoglycoside containing 8 to 22 carbon atoms in the alkyl group and ethoxylated analogs thereof (col. 3, lines 12-14 and lines 47-60). US '702 also exemplifies a composition comprising tartaric monostearyl ester and cocoalkyl glycoside, which read on the instant components a) and b) (Table 1, composition R1). '702 do not specifically teach compositions containing a cosmetic or pharmaceutical active agent. However, '702 teach including auxiliaries or additives in the pearlescent composition comprising anti-dandruff agents, UV absorbers etc (col. 6, lines 8-16). Further, with respect to the method claims, the composition of '702 is being used for dermatological applications such as hair shampoos and other cosmetic purposes (col. 7, line 37 and col. 5, line 15). Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use a combination of cosmetic or pharmaceutical active ingredients (such as fragrance, dyes or anti-dandruff agent, the latter meets both cosmetic and pharmaceutical actives) with the pearly luster carboxylic acid ester and alkyl oligoglycoside surfactants because US '702 suggests that while the carboxylic acid esters impart excellent pearlescent properties, brilliance even in smaller amounts and the nonionic surfactants improve the free-flowing nature of the pearly luster concentrate. US '702 also exemplify compositions with same number of carbon atoms in the esters and oligoglycoside (composition R2, Table 1) in the composition, but does not teach the claimed ratios of esters and oligoglycoside. '702 disclose a range of percentages of ester and oligoglycoside and accordingly optimizing the amounts of the pearlescent component and the amount of surfactant with an

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expectation to obtain the desired amount of pearlescence as well as a free-flowing composition would have been within the scope of a skilled artisan at the time of the instant invention. Further, '702 teach that the compositions are free flowing, biodegradable, impart valuable and rich appearance and therefore absent showing the compositions of '702 are compatible for cosmetic or dermatological purposes.

Alternatively, WO discloses a composition comprising alkyl polyglycoside, wherein the composition is used for cleaning hair and/or skin. WO teaches alkyl polyglycoside that is similar to that described in the instant application (page 7). In addition to alkyl polyglycoside, WO teaches an additive such as alkyl sulfate, carboxylic acids including their derivatives and salts, aliphatic sorbitan esters, Guerbet alcohols etc (page 6). WO does not teach dicarboxylic acid esters of the instant claims.

US '702, described above, teaches a pearly luster concentrate comprising the instant component a) as a suitable pearlescent agent, and a nonionic surfactant such as alkyl oligoglycoside, for increasing the free-flowing nature of the concentrate, when used in cosmetic compositions such as shampoos. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use the carboxylic acid ester of US '702, to impart pearly luster concentrate to the composition of WO containing alkyl oligoglycoside as nonionic surfactants because US '702 suggests that the carboxylic acid esters impart excellent pearlescent properties & brilliance even in smaller amounts and the nonionic surfactants improve the free-flowing nature of the pearly luster concentrate.

RESPONSE: Applicants state that the critical limitations of the instant composition are an alkyl or alkyl oligoglycoside, and an anionic surfactant foam stabilizer selected from a group consisting of dicarboxylic acid monoesters or a salt thereof with a C6-22 fatty alcohol. It is argued that '702 and WO, alone or in combination fails to teach or suggest the instant invention. It is argued that there is no teaching or suggestion of an alkyl or alkenyl oligoglycoside in combination with the anionic surfactant, described above.

Applicants argue that '702 is directed to aqueous pearlescent concentrates containing esters of polybasic carboxylic acids or hydroxycarboxylic acids, emulsifiers and optionally polyols and pearlescent surface active formulations using the concentrates. It is argued that the pearlescent waxes of '702 are not anionic surfactant, because they are insoluble in water and remain in crystalline form.

Applicants' arguments are not persuasive for the same reasons mentioned in the office action dated 4-19-06 (under Response to Arguments) because '702 teach esters of carboxylic acids such as those claimed in the instant invention. In other words, the esters described in col. 2, L 29-63 include the same carboxylic acids and their esters. Applicants have not shown how the same ester products of US '702 are different from instant claims. Thus, irrespective of their property, solubility or foam stabilization, the compounds of '702 are same. Further, '702 teach a combination of the claimed esters and polyalkylglycoside and hence it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to add the carboxylic acid esters of '702 to the composition of WO with an expectation to impart pearly luster concentrate to the composition of WO containing alkyl oligoglycoside as nonionic surfactants because US

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'702 suggests that the carboxylic acid esters impart excellent pearlescent properties & brilliance even in smaller amounts and the nonionic surfactants improve the free-flowing nature of the pearly luster concentrate. WO also states that alkyl polyglycosides forms a stable foam and that a foam stabilizing effect is exerted when combined with anionic surfactants (page 10, lines 2-12) and that the polyglycosides when used in combination with anionic surfactants in hair or personal care formulations result in low skin irritation. Applicants admit that the monoesters are anionic surfactants and even though '702 fails to recognize foam stability, the property of stabilizing is inherent to the esters of '702 and therefore the combination results in foam stability and low irritation (reads on the claimed compatibility).

Further, it is argued that WO does not cure the deficiencies of US '702 because WO teaches a long list of anionic surfactants that include the claimed monoester of dicarboxylic acid. It is argued that because US '702 do teach or suggest the combination and further because tartaric monostearyl ester is not an anionic surfactant, the rejection based on US '702 alone or in combination with WO is untenable. Applicants' arguments are not persuasive because the mere fact that a reference teaches a long list of compounds is not in itself a lack of teaching. WO teaches a group of compounds with a common function or property i.e., anionic surfactants and their combination with alkyl or alkenyl oligoglycoside. Applicants admit that the surfactants of WO do include the claimed compounds. Further, WO teaches the addition of anionic surfactants, as essential, for the same purpose as that claimed i.e., foam stabilization. Accordingly,

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irrespective of the number of compounds taught by WO, each one of the compounds provide a foam stabilization effect, which is an essential feature required by WO. Thus, it would have been obvious for one of ordinary skill in the art to add anionic surfactants (such as the monoesters of carboxylic acids) of WO to the composition of US '702 or vice-versa, so as to stabilize foam caused by oligoglycoside.

Allowable Subject Matter

Claims 15 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Instant claims require that the foam stabilizer is an alkali metal, alkaline earth metal, and ammonium, alkyl ammonium or glucammonium salts of dicarboxylic acid monoesters. The prior art of record does not teach nor provide a motivation for the claimed salts in combination with component an i.e., alkyl or alkenyl oligoglycoside of the instant invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

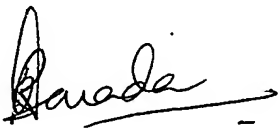
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free):

Lakshmi S Channavajjala
Examiner
Art Unit 1615

December 25, 2006



LAKSHMI S. CHANNAVAJJALA
PRIMARY EXAMINER

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